

OFFICE OF MANAGEMENT AND BUDGET

Implementation of Executive Order 12372, "Intergovernmental Review of Federal Programs"

AGENCY: Management Reform Division and Associate Director for Management, Office of Management and Budget.

ACTION: Notice.

SUMMARY: This notice contains a letter from the President to governors, legislative leaders, and officers of major local government organizations. The notice also discusses how comments addressed to the Office of Management and Budget (OMB) during the public comment period on agency proposed rules on E.O. 12372 were handled, and future steps being undertaken to implement the Order.

FOR FURTHER INFORMATION CONTACT: Walter S. Groszyk Jr., Room 10236, New Executive Office Building, 726 Jackson Place NW., Washington, D.C. 20503.

SUPPLEMENTARY INFORMATION:

Letter from the President

On June 23, 1983, the President wrote an identical letter to the state and local officials indicated above. The letter is as follows:

THE WHITE HOUSE

Washington

June 23, 1983.

Dear Scott: Nearly a year ago, I signed E.O. 12372, "Intergovernmental Review of Federal Programs," which clearly set out the direction I wanted Federal agencies to take in their dealings with state and local governments. Remembering my days in California, I specifically wanted the Federal agencies to be responsive to you and your fellow state and local elected officials. I wanted you to have greater influence in the actions we take that affect your jurisdictions—whether building a highway, awarding an elderly nutrition grant, or locating a sewage treatment plant.

With their joint publication of final rules tomorrow, the Federal agencies will clearly indicate to you and your colleagues how they will be responsive to your concerns. In essence, we have established an approach that is based on your own review and comment processes.

You now have three months to finalize your approach as we work together toward September 30th, the day this major change takes effect.

I pledge to you the full cooperation and support of my Administration as together, in the spirit of Federalism, we

make intergovernmental cooperation a reality.

Sincerely,

Ronald Reagan

[The Honorable Scott M. Matheson, Governor of Utah, Salt Lake City, Utah 84114]

The Office of Management and Budget is publishing this letter for state and local officials who will be working together over the next several months to finalize a state process on intergovernmental coordination and review, and to select federal programs and activities to be covered under that state process.

Comments on Agency Proposed Rules

OMB received numerous comments on the agencies' Notices of Proposed Rulemaking. These comments were provided to all affected agencies as appropriate for inclusion in the agency dockets. As OMB did not publish any Notice of Proposed Rulemaking, we asked the agencies to consider the comments that were sent us. The agencies have done so, and have addressed these comments in the preambles to their final rules.

There were, however, several comments that the rulemaking agencies were unable to respond to. These comments asked that the United States Synthetic Fuels Corporation and the Interstate Commerce Commission be included among the federal agencies to which the Executive Order applies. OMB does not believe the Executive Order should be applied to these agencies. The Interstate Commerce Commission does not engage in federal financial assistance or direct federal development. The developmental activities of the Synthetic Fuels Corporation involve non-governmental entities and the Corporation itself is not an Executive Branch agency in the traditional sense.

Future Steps

OMB intends to work with the 23 federal agencies publishing final rules implementing the Executive Order in today's Federal Register on their efforts to carry out these rules. OMB will also receive from each state the initial selection of programs and activities to be covered under the state process and the name of the office or official designated as the single point of contact. OMB has also asked the governors to provide an assurance that their states have taken official action to designate a process, and that local elected officials were involved in the development of the

process and in the selection of covered program.

For the time being, state and local officials and other interested parties are asked to contact the federal agency official identified in each final rule as a contact person if questions or concerns arise during the next several months. The federal agencies are directly responsible for the implementation of the Executive Order and will devote adequate staff resources to provide immediate and responsive help. OMB will not have day-to-day operational responsibilities regarding federal programs and activities under the Order, but will oversee agency implementation to ensure federal responsiveness to state and local governments.

Dated: June 23, 1983.

Harold I. Steinberg,
Associate Director for Management.

[FR Doc. 83-17250 Filed 6-23-83; 8:45 am]

BILLING CODE 3110-01-M

State Plans Eligible for Modification Under Executive Order 12372

Section 2(d) of Executive Order 12372 directs Federal agencies to "allow" states to simplify or consolidate existing Federally required State Plans and, where permitted by law, to "encourage" states to substitute their own plans for Federally required state plans.

State plans required by the Federal Government that are eligible for modification (i.e., simplification, consolidation, or substitution) under the Order are listed below.

Dated: June 23, 1983.

Harold I. Steinberg,
Associate Director for Management.

STATE PLANS ELIGIBLE FOR MODIFICATION UNDER EXECUTIVE ORDER 12372

Agency and CFDA No.	Program title
Agriculture:	
10.550	Food Distribution.
10.557	Special Supplemental Food Program for Women, Infants and Children (WIC).
10.559	Summer Food Service Program for Children.
10.560	State Administrative Expenses for Child Nutrition.
10.564	Nutrition Education and Training Program.
10.565	Commodity Supplemental Food Program.
Contact: John Stokes (202/756-3017).	
Education:	
84.002	Adult Education—State Administered Programs.
84.034	Public Library Services.
84.035	Interlibrary Cooperation.
84.048	Vocational Education—Basic Grants to States.
84.049	Vocational Education—Consumer and Homemaking Education.
84.050	Vocational Education—Program Improvement and Supportive Services.
84.052	Vocational Education—Special Programs for the Disadvantaged.

STATE PLANS ELIGIBLE FOR MODIFICATION
UNDER EXECUTIVE ORDER 12372—Continued

Agency and CFDA No.	Program title
84.053.....	Vocational Education—State Advisory Councils.
84.121.....	Vocational Education—State Planning and Evaluation.
84.126.....	Rehabilitation Services—Basic Support.
Contact: Leroy Walser (202/447-9043).	

Energy:	
81.0041.....	State Energy Conservation.
81.0042.....	Weatherization Assistance for Low-Income Persons.
81.0043.....	Supplemental State Energy Conservation.
81.0050.....	Energy Extension Service.
81.0052.....	Energy Conservation for Institutional Buildings.
Contact: Richard Brancato (202/252-9240).	

HHS:	
13.630.....	Administration on Developmental Disabilities—Basic Support and Advocacy Grants.
13.633.....	Special Programs for the Aging—Title II, Parts A and B—Grants for Supportive Services and Senior Centers.
13.635.....	Special Programs for the Aging—Title III, Part C—Nutrition Services.
13.645.....	Child Welfare Services—State Grants.
13.646.....	WIN.
13.659.....	Adoption Assistance.

Interior:	
15.252.....	Abandoned Mine Land Reclamation Program.

STATE PLANS ELIGIBLE FOR MODIFICATION
UNDER EXECUTIVE ORDER 12372—Continued

Agency and CFDA No.	Program title
Contact: Gordon Boe (202/245-6036).	
15.605.....	Fish Restoration.
15.611.....	Wildlife Restoration.
15.916.....	Outdoor Recreation—Acquisition, Development and Planning.
15.904.....	Historic Preservation Grants-in-Aid.
Contact: Timothy S. Elliott (202/343-4722).	

Justice:	
16.540.....	Juvenile Justice and Delinquency Prevention—Formula Grant Program.
16.541.....	Juvenile Justice and Delinquency Prevention—Special Emphasis and Technical Assistance Grants (except Grants to Nongovernmental Entities).
Contact: Lynn C. Dixon (202/724-5947).	

Labor:	
(Sec. 104).....	Job Training Partnership Act (PL 97-300).
17.207.....	Employment Service.
Contact: Joyce Kaiser (202/376-6503).	

Transportation:	
20.308.....	Local Rail Service Assistance.
20.600.....	State and Highway Community Safety.
20.700.....	Gas Pipeline Safety.

EPA:	
66.001.....	Air Pollution Control Program Grants.
66.419.....	Water Pollution Control—State and Interstate Program Grants.

STATE PLANS ELIGIBLE FOR MODIFICATION
UNDER EXECUTIVE ORDER 12372—Continued

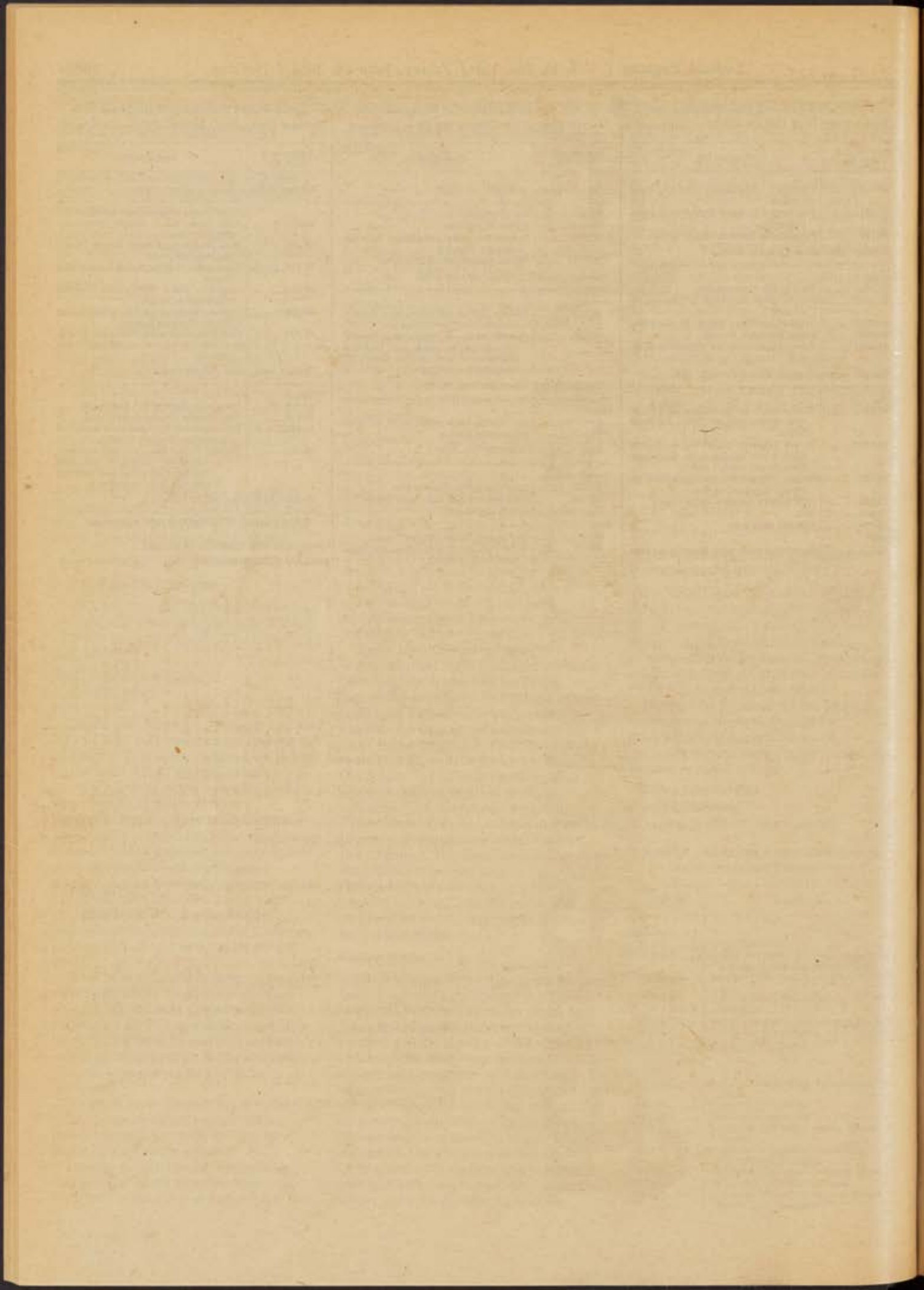
Agency and CFDA No.	Program title
Contact: Kelley Andrews (202/426-1524).	
66.432.....	Water Quality Management Planning, State Public Water System Supervision Program Grants.
66.433.....	State Underground Water Source Protection Program Grants.
66.438.....	Construction Management Assistance Grants.
66.451.....	Hazardous Waste Management Financial Assistance to States.
66.600.....	Environmental Protection Consolidated Grants—Program Support.
66.700.....	Pesticides Enforcement Program Grants, Pesticides Applicator Certification and Training.
Contact: Jack Gwynn (202/382-5266).	

FEMA:	
83.503.....	Emergency Management Assistance.
83.505.....	State Disaster Preparedness Grants.
83.506.....	Earthquake and Hurricane Loss Study and Contingency Planning Grants.
83.516.....	Disaster Assistance: Two subprograms— 1. Temporary Housing (if the State assumes operational responsibility); 2. Individual and Family Grants.
Contact: Herb Jones (202/287-3899).	

¹CFDA = Catalog of Federal Domestic Assistance.

[FR Doc. 83-17260 Filed 6-23-83; 8:45 am]

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Federal Register

Friday
June 24, 1983

Part III

Department of Agriculture

Office of the Secretary, Farmers Home
Administration, Forest Service, and Food
and Nutrition Service

Intergovernmental Review of Department
of Agriculture Programs and Activities;
and

Rescission of Regulations Involving
Consultation With State and Local
Governments; Final Regulations and
Department of Agriculture Proposal to
Exclude the Cooperative Extension
Service From Executive Order 12372;
Proposed Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3015

Intergovernmental Review of the Department of Agriculture Programs and Activities

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This final rulemaking implements Executive Order 12372, "Intergovernmental Review of Federal Programs." It applies to Federal financial assistance and direct Federal development programs and activities of the Department of Agriculture, Executive Order 12372, and these regulations, are intended to replace the intergovernmental consultation system developed under the Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

DATE: Effective September 30, 1983.

FOR FURTHER INFORMATION CONTACT:

Ms. Lyn Zimmerman, Office of Finance and Management, Financial Management Division, 14th and Independence Avenue, S.W., Room 143-W, Administration Building, Washington, D.C. 20250, on (202) 382-1553.

SUPPLEMENTARY INFORMATION: On January 24, 1983, (48 FR 3082), the Department, along with 25 other Federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order. Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. The Department, in conjunction with the other 27 Federal agencies and OMB, published a Notice in the Federal Register (48 FR 17101) on April 21, 1983, reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including comments received by OMB and other Federal agencies, which were also incorporated into the Department's rulemaking docket, the Department received approximately 160 letters on government-wide issues during the initial comment period. In addition, the Department received 903 letters specifically related to the inclusion or exclusion of this Department's programs

from the coverage of the Order and other issues pertaining only to the Department.

In preparing this final rule, the Department considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 27 Federal agencies, that are issuing a final rule, the Department has made several changes from the proposed rule. The Department is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with State and local elected officials and to accommodate their concerns to the greatest extent possible.

Several State, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give State and local elected officials more time to establish the State processes and to consider which Federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983, (48 FR 15587, April 11, 1983). The Department's existing regulations and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

In connection with this final rule, the Department is rescinding § 3015.203, its existing regulation implementing former OMB Circular A-95. Regulations and directives promulgated by individual USDA Agencies will be removed by each Agency simultaneously with this final rule.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982. (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. The Executive Order:

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance and direct Federal development;
- Increases Federal responsiveness to State and local officials by requiring

Federal agencies to accommodate State and local views or explain why not;

- Allows States to simplify, consolidate, or substitute State plans; and,
- Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the State process, the single point of contact, and the Federal agency's "accommodate or explain" response to State and local comments submitted in the form of a recommendation.

State Process

The State process is the framework under which State and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the State process: (1) a State must tell the Federal agency which programs and activities are being included under the State process, and (2) a State must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. The Executive Order provides that States are also to consult with local governments when establishing the State process. Any other components are at the discretion of the State. This lack of prescriptiveness gives State and local officials the flexibility to design a process that responds to their interests and needs.

A State is not required to establish a State process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how Federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most State processes will likely include the following components:

- A designated single point of contact;
- Delegations of review and comment responsibilities to particular State, areawide, regional, or local entities;
- Procedures to coordinate and manage the review and comment on proposed Federal financial assistance or direct

Federal development, and to aid in reaching a State process recommendation;

- A means of consulting with local officials; and,
- A means of giving notice to prospective applicants for Federal assistance as to how an application is to be managed under the State process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the State selects which of these Federal programs and activities are to be reviewed through the State process and sends the initial list of selected programs and activities to OMB. Subsequent changes to the list are provided directly to the appropriate Federal agencies.

The Federal agency provides the State process with notice of proposed actions for selected programs and activities. For any proposed action under a selected program or activity, the State has among its options those of: preparing and transmitting a State process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to State process procedures.

For proposed actions under programs or activities not selected, the Federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The State single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by Federal agencies. The single point of contact does so by transmitting a State process recommendation. (The terms "accommodate or explain" and State process recommendation are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for Federal agency consideration any views differing from a State process recommendation, and receiving a written explanation of a Federal

agency's nonaccommodation. No other responsibilities are prescribed by the Federal government for the single point of contact, although a State could choose to broaden the single point of contact role.

The single point of contact need not submit for Federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no State process recommendation. Commenting officials and entities can submit such views directly to the Federal agency.

A State need not designate a single point of contact. However, if a State fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an accommodate or explain response by the Federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the Federal agency in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

Accommodate or Explain

When a single point of contact transmits a State process recommendation, the Federal agency receiving the recommendation must either: (1) Accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the Federal agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "State process recommendation" is developed by commenting State, areawide, regional, and local officials and entities participating in the State process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A State process recommendation which is a consensus—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted.

All directly affected levels of government need not comment on the proposed action being reviewed to form a State process recommendation. Also, the State government need not be party to such a State process recommendation.

A State process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, the Department altered the section and subsection numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is considered in the final rule. Additionally, section titles have been changed in this analysis to reflect those titles set forth in the final rule.

Proposed rule (section)	Final rule (section)
3015.300 (Reserved)	
3015.301	3015.300.
3015.302	3015.301.
3015.303(a)	3015.302.
3015.303(b)	3015.306(a).
3015.304	3015.303.
3015.305(a)	3015.305(b).
3015.305(b)	3015.305(d).
3015.305(c)	3015.305(c).
3015.306(a)	3015.307(b).
3015.306(b)	3015.306(a).
3015.306(c)	3015.307(a).
3015.306(d)	Deleted.
3015.306(e)	3015.308.
3015.307(a)	3015.309(a).
3015.307(b)	3015.309 (b) (c).
3015.308	3015.310.
3015.309	3015.311.
3015.310	3015.312.

Portions of the final rule not listed in this table §§ 3015.304, 3015.305(a), 3015.306(b), and 3015.307(c) are new.

Section 3015.300 Purpose.

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements. Nor did the NPRM expressly implement section 204 of the Demonstration Cities and Metropolitan Development Act. These statutes provide as follows:

BILLING CODE 3410-KS-M

Section 401 of the Intergovernmental Cooperation Act of 1968, 31 U.S.C. 6506.**§6506. Development Assistance**

(a) The economic and social development of the United States and the achievement of satisfactory levels of living depend on the sound and orderly development of urban and rural areas. When urbanization proceeds rapidly, the sound and orderly development of urban communities depends to a large degree on the social and economic health and the sound development of smaller communities and rural areas.

(b) The President shall prescribe regulations governing the formulation, evaluation, and review of United States Government programs and projects having a significant impact on area and community development (including programs and projects providing assistance to States and localities) to serve most effectively the basic objectives of subsection (a) of this section. The regulations shall provide for the consideration of concurrently achieving the following specific objectives and, to the extent authorized by law, reasoned choices shall be made between the objectives when they conflict:

- (1) appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes.
- (2) wise development and conservation of all natural resources.
- (3) balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other means to move people and goods.
- (4) adequate outdoor recreation and open space.
- (5) protection of areas of unique natural beauty and historic and scientific interest.
- (6) properly planned community facilities (including utilities for supplying power, water, and communications) for safely disposing of wastes, and for other purposes.
- (7) concern for high standards of design.

(c) To the extent possible, all national, regional, State, and local viewpoints shall be considered in planning development programs and projects of the United States Government or assisted by the Government. State and local government objectives and the objectives of regional organizations shall be considered within a framework of national public objectives expressed in laws of the United States. Available projections of future conditions in the United States and needs of regions, States, and localities shall be considered in plan formulation, evaluation, and review.

(d) To the maximum extent possible and consistent with national objectives, assistance for development purposes shall be consistent with and further the objectives of State, regional, and local comprehensive planning. Consideration shall be given to all developmental aspects of our total national community, including housing, transportation, economic development, natural and human resources development, community facilities, and the general improvement of living environments.

(e) To the maximum extent practicable, each executive agency carrying out a development assistance program shall consult with and seek advice from all other significantly affected executive agencies in an effort to ensure completely coordinated programs. To the extent possible, systematic planning required by individual United States Government programs (such as highway construction, urban renewal, and open space) shall be coordinated with and, to the extent authorized by law, made part of comprehensive local and areawide development planning.

(f) When a law of the United States provides that both a special-purpose unit of local government and a unit of general local government are eligible to receive a loan or grant, the head of an executive agency shall make the loan or grant to the unit of general local government instead of the special-purpose unit of local government in the absence of substantial reasons to the contrary.

(g) The President may designate an executive agency to prescribe regulations to carry out this section.

Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3334.

§3334. Coordination of Federal aids in metropolitan areas.

(a) All applications made after June 30, 1967, for Federal loans or grants to assist in carrying out open-space land projects or for the planning or construction of hospitals, airports, libraries, water supply and distribution facilities, sewerage facilities and waste treatment works, highways, transportation facilities, law enforcement facilities, and water development and land conservation projects within any metropolitan area shall be submitted for review—

(1) to any areawide agency which is designated to perform metropolitan or regional planning for the area within which the assistance is to be used, and which is, to the greatest practicable extent, composed of or responsible to the elected officials of a unit of areawide government or of the units of general local government within whose jurisdiction such agency is authorized to engage in such planning, and

(2) if made by a special purpose unit of local government, to the unit or units of general local government with authority to operate in the area within which the project is to be located.

(b)(1) Except as provided in paragraph (2) of this subsection, each application shall be accompanied (A) by the comments and recommendations with respect to the project involved by the areawide agency and governing bodies of the units of general local government to which the application has been submitted for review, and (B) by a statement by the applicant that such comments and recommendations have been considered prior to formal submission of the application. Such comments shall include information concerning the extent to which the project is consistent with the comprehensive planning developed or in the process of development for the metropolitan area or the unit of general local government, as the case may be, and the extent to which such project contributes to the fulfillment of such planning. The comments and recommendations and the statement referred to in this paragraph shall, except in the case referred to in paragraph (2) of this subsection, be reviewed by the agency of the Federal Government to which such application is submitted for the sole purpose of assisting it in determining whether the application is in accordance with the provisions of Federal law which govern the making of the loans or grants.

(2) An application for a Federal loan or grant need not be accompanied by the comments and recommendations and the statements referred to in paragraph (1) of this subsection, if the applicant certifies that a plan or description of the project, meeting the requirements of such rules and regulations as may be prescribed under subsection (c) of this section, or such application, has lain before an appropriate areawide agency or instrumentality or unit of general local government for a period of sixty days without comments or recommendations thereon being made by such agency or instrumentality.

(3) The requirements of paragraphs (1) and (2) shall also apply to any amendment of the application which, in light of the purposes of this subchapter, involves a major change in the project covered by the application prior to such amendment.

(c) The Office of Management and Budget, or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this section.

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A broad spectrum of commenters, including State, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that the Federal agencies carry out their responsibilities under these statutes. In response, the Executive Order was amended to cite section 401 as authority as well as section 204. Consequently, paragraph (a) of this section (as well as the authority citation for the entire regulations) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act. Paragraph (b) adds mention of "areawide" entities in keeping with section 204. Other provisions in these regulations carry out the Department's responsibilities under these statutory provisions.

Section 401 emphasizes that Federal actions should be as consistent as possible with planning activities and decisions at State, regional, and local levels. The Department, when considering and making efforts to accommodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The final rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between the Department and other Federal agencies on one hand, and State and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of Federal, State and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulations, the Department is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 3015.301 Definitions.

Commenters did not object to the definitions in the proposed rule.

However, a few commenters asked that various additional terms be defined.

The Department does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulations. In any event, the Department would not use the term in any but its commonly understood sense.

The Department chose not to include a definition of "State plans," "direct Federal development," or "Federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to Federal financial assistance) has shown that it is difficult to draft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in these cases, the lists of State plans and program inclusions accompanying this rulemaking provide adequate operational information upon which State and local elected officials can act.

The Department also decided not to try defining "emergency" and "unusual circumstances." With respect to terms like these, the dangers of overinclusiveness and underinclusiveness are particularly great. The purpose of an emergency waiver provision or discretion to deviate from certain requirements in unusual circumstances is to give Federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rules, the Department expects to use such provisions sparingly, and only when absolutely necessary. Thus, it would be counterproductive to attempt, through a definition, to limit this flexibility by anticipating all possible circumstances when it might be needed.

The Department also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in section 3015.309. In this section, the Secretary accepts the State process recommendation or reaches a mutually agreeable solution. If the Department does not provide an accommodation in one of these two ways, it must provide an explanation. Since the Department believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

Finally, the Department considered whether to include a definition of the term "State process recommendation." The Department concluded that a definition of this term would not materially help clarify those situations in which the Department has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble, and this should provide sufficient information as to its meaning.

Section 3015.302 Applicability.

This section is substantially very similar to § 3015.303(a) of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal government to exclude any programs or activities from coverage under the Order and these regulations, and that the elected officials participating through the State process are the only proper parties to decide what should be excluded from the State process. Other commenters objected to various criteria used by the Federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all Federal programs and activities. Its scope is limited to Federal financial assistance and direct Federal development program and activities, and the Order mandates consultation only when State and local governments provide non-Federal funds for, or are directly affected by the proposed Federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., Coast Guard search and rescue activities, procurement of military weapon systems). Many National security actions, even those affecting State and local jurisdictions, involve classified information. It is meaningless to expect State and local review of National security matters, for example, when access to the plans or documents for the proposed Federal action is not possible for National security reasons. It is appropriate for Federal agencies to decide which of their activities are Federal financial assistance or direct Federal development.

There are also actions related to Federal financial assistance or direct Federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal government functions either have public

participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which State and local coordination and consultation are not appropriate (e.g., formulation of the Department's budget proposals transmitted to OMB or OMB's recommendations to the President concerning budget formulation).

A purpose of block grant programs is to give funding discretion to State and local governments. There is little point in requiring State and local coordination of funding decisions under block grants when State and local governments, rather than the Federal government, have all the discretion with respect to grant applications or other decisions.

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, the Department believes these should continue to be excluded from the listing of programs and activities which are eligible for selection for a State process. However, in response to comments, the Department has reviewed the criteria for exclusion as well as the particular exclusions that were proposed in January. The criteria and particular exclusions are discussed in more detail in that section of the preamble concerning scope issues.

To provide information on the activities and programs available for selection for State processes, the Department is publishing a Notice listing these "included" programs and activities. Included programs to which section 204 of the Demonstration Cities and Metropolitan Development Act applies are indicated with an asterisk (*). Section 204 obligations apply with respect to these programs only for projects or activities located in metropolitan areas. Otherwise, these projects are treated like any other programs available for selection. This information is being published in a separate Notice rather than as part of this rule to allow changes to be made more conveniently in the future. The Department will seek public comment on proposed future program or activity exclusions as they occur.

Section 3015.303 Secretary's General Responsibilities.

There were no substantive comments about this section, which restates many of the provisions of the Executive Order. It is unchanged from the NPRM.

Section 3015.304 Federal Interagency Coordination.

Some commenters, including those suggesting a Federal single point of contact, asked the Department and other

Federal agencies to do more in ensuring that Federal agencies communicate not only with State and local elected officials but also with each other. The Department believes that this point is well taken. Many programs and projects require information or approvals from a number of Federal agencies, and Federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the Department is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Secretary, to the extent practicable, will consult with and seek advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

Section 3015.305 State Selection of Programs and Activities.

Paragraph (a) of this section is new. It makes clear that any program or activity published in the Federal Register list prescribed by § 3015.302 is eligible for selection for a State process. This paragraph also declares, more explicitly than the NPRM, that States are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the State's obligation in this regard, as well as in the establishment of a State process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the State submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of State processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between State and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by State and local elected officials in cooperation and consultation with one another. The Department believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a State process. In particular, the Department does not believe that the Order contemplates so rigid a requirement as a sign-off by an official

of each local jurisdiction in a State before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (c) and (b), respectively, of § 3015.305 of the NPRM. There were no comments objecting to the substance of these subsections in the NPRM. Language added to paragraph (c) of the final rule specifies that the State must submit to the Secretary with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of States to involve local elected officials in decisions concerning what programs are selected for the State process. The subsection also allows the Department to establish deadlines for States to inform the Secretary of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having, on short notice, to make midstream changes in coordination procedures. In addition, the Department has made some editorial changes for clarity.

A number of commenters asked what procedures apply when a State chooses not to adopt a process under the Order or when a particular program or activity is not selected for a State process. This question is answered in paragraph (b) of § 3015.306 discussed below.

Section 3015.306 Communication With State and Local Elected Officials.

Paragraph (a) incorporates material from §§ 3015.303(b) and 3015.306(b) of the NPRM, except that the final regulation specifies that the Secretary's obligation to communicate with State and local elected officials applies to programs and activities subject to the Order that are covered by a State process. This change is intended to emphasize that it is with the State process, not just a Governor's office or other State government entity, that the Secretary will communicate.

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a State process. The Department must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a State process. The Department may also take the initiative at any time to contact any

interested person or entity about one of the Department's programs or activities. Further, the Department need not rely on the State process or the single point of contact to bring about this communication or consultation.

When the Department notifies the State process with respect to a proposed action concerning a program or activity that has been selected for the State process, notification of areawide, regional, and local entities for purposes of sections 204 and 401 is the responsibility of the State process. The single point of contact could be the information channel for this purpose. The Department need not have to notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how the Department communicates with local elected officials in situations where a State does not have a State process or where the State process does not cover a particular program or activity. The Department will carry out its responsibilities in these situations by providing notice to State, areawide, regional or local officials or entities that would be directly affected by the proposed Federal financial assistance or direct Federal development. This notice may be either through publication (e.g., a notice in the Federal Register or in a publication widely available in the area potentially affected by the proposed Federal action) or direct (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identify who in the Department they should contact for more information.

Paragraph 3015.306(c) is new. This subsection has been added to ensure that communications under the Executive Order will be channeled to appropriate officials of the Department and will ensure that official correspondence pertaining to the Order is handled expeditiously.

Section 3015.307 State Comments on Proposed Federal Financial Assistance and Direct Federal Development.

More commenters—over a third of the total—addressed § 3015.306(c) of the NPRM (redesignated § 3015.307(a) in the final rule) than any other provision in the proposed regulations. The NPRM proposed that, except in unusual circumstances, the Secretary would give States at least 30 days to comment on any proposed Federal financial assistance or direct Federal development. Almost all commenters discussing this point felt 30 days was

too brief a period to develop comments, particularly when disagreements among various interested parties within the State need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to States either at their discretion or when disputes needed to be resolved.

In response to these comments, the Department has decided to lengthen the comment period to 60 days in all cases (including interstate matters) except with respect to Federal financial assistance in the form of noncompeting continuation awards, for which the comment period would remain at 30 days.

The Secretary will establish, in the notice to the single point of contact or to directly affected entities, a date from which the 30 or 60 day comment period would begin to run. This information could be provided, for example, in program specific announcements concerning the availability of grants. Where a program or activity is not selected for the State process, the Department will provide notice, including any adjustments to the comment period that may be necessary, to directly affected State, areawide, regional, and local entities regarding the proposed Federal action. Because paragraphs (a) and (b) now provide that the Secretary will establish this starting date, the language of the NPRM permitting the Secretary to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Secretary will ensure that commenting parties under the State process are afforded adequate time to review and comment on an application or project proposal.

Several commenters indicated that a notice of intent to apply for funds was the key element in any timely review, and that a full and complete application was generally received too late and contained too much unnecessary detail to be useful. The Department is aware of these concerns, but in the interest of retaining as much flexibility as possible for the State process, has decided not to require applicants to submit notices of intent or full and complete applications at particular points in time to the State process. The Department encourages applicants at an early stage to notify and talk with officials and entities who have the opportunity to review and comment on the application. Paragraph (b) of this section is derived from § 3015.306(a) of the NPRM. The provisions of this section apply to cases

in which review, coordination, and communication with the Department have been delegated. This subsection is intended to make clear that, when this responsibility is delegated, these procedures apply just as if the matter were handled at the State level.

Paragraph (e) of § 3015.306 of the NPRM has been dropped. A new § 3015.308 of the final rule describes how the Secretary receives and responds to comments.

Section 3015.308 Processing Comments.

This new section replaces § 3015.306(e) of the NPRM and elaborates in substantially greater detail the Secretary's obligations concerning the receipt of and response to comments. Section 3015.306(e) had provided that the Secretary would respond as provided in the Order to all comments from a State that are provided through a State office or official that acts as a single point of contact under the Order between the State and the Federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a State instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their State process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to Federal agencies of the concerns of local elected officials and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and the Department's decision explicitly to implement, through these regulations, section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act, the Department has made substantial changes to this subsection.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implementation of the

Executive Order requires a means of handling the communication and information flow between Federal-State/State-local Federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all Federal agencies and all parties within a State know that a particular office or official performs this State/local-Federal communications link for the State process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of State and local elected officials on proposed Federal actions. It does not matter to the Department whether this single point of contact also has a substantive role in preparing comments. That is up to the State and local elected officials who establish each State process. The Department is concerned only that the single point of contact communicate those comments and recommendations to the Department.

Paragraph (a) obligates the Secretary to follow the "accommodate or explain" procedures of § 3015.309, if two conditions are met. First, the State must have designated a single point of contact. Second, the single point of contact must have transmitted a State process recommendation. The single point of contact, and not the applicant, must transmit the recommendation to the Department. If these conditions are not met, the Secretary will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The "State process recommendation" is intended to clarify the reciprocal responsibilities of the State and Federal agencies under the Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that Federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of State and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Administration's view, that State and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from the Federal government. Where States and other directly affected parties carry out these responsibilities by forging a State

process recommendation, it is highly appropriate for the Federal government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, the Department will always fully consider all comments it receives under these regulations.

The Department's practical, as well as theoretical, reasons for stressing consensus building was described in the NPRM. We expect that carrying out the Department's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would be difficult to achieve or undesirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the Department will respond as provided in section 3015.309 to a State process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from the Department under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the State process recommendation, all officials and entities within a State are assured that comments that differ from the State process recommendation on a particular program or project will be seen and considered by the Department.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no State process recommendation. However, the single point of contact should advise the commenting officials and entities when a State process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Department before the review and comment period ends. These entities may also choose to send their comments directly to the Department concurrent with their sending them to the State process.

Paragraph (b)(2) obligates the single point of contact to transmit to the Department all comments received

concerning a selected program or activity that differ from a State process recommendation. This requirement will ensure that, as sections 204 and 401 specify, the Department considers all views from State, areawide, regional, and local entities or officials. It should also reassure commenters that the views of concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), the Department makes provision for responding to comments in situations where there is no State process or for programs that are not selected for a State process. Paragraph (c) provides that, in the absence of a State process, or if the single point of contact does not transmit a State process recommendation, State, local, regional, and areawide officials and entities may submit comments either to the applicant or to the Department. The Department is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the State process does not cover a particular program or activity of the Department. The Department deliberated whether in this rule to require applicants to transmit all comments they had received. The Department decided not to impose such a requirement in this rule but expects applicants to do so. The Department retains the option of selectively requiring an applicant to do this as part of an application kit or in a notice of availability of funds.

Paragraph (e) simply reiterates the Department's obligation to consider all the comments it receives from State, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to the Department. This obligation derives directly from sections 401 and 204.

A number of commenters suggested that the Department and other Federal agencies impose various administrative requirements with respect to financial assistance programs. Among the suggestions were that Federal agencies tell applicants about the requirements of each State process; that comments from the State process be sent to the applicant before the application is forwarded and that the applicant attach these to the application; that the State process be able to require a "notice of intent;" that Federal agencies should not act on an application before receiving comments from the State process; that Federal agencies require applicants to submit materials requested by the State process; and, that Federal agencies have

applicants themselves contact interested local parties.

Although, the Department recognizes a responsibility to work with its applicants so this new intergovernmental consultation system functions smoothly, the Department does not believe it is appropriate to impose specific regulatory requirements regarding administrative details of this kind. The Department believes that each State process should establish the "paper flow" procedures best suited to its situation. Where the State process decides to send comments to the applicant, the Department will expect the applicant to forward those comments with the application to the Department. However, this does not obviate the necessity for transmitting the State process recommendations to the Department through the single point of contact. The point here is that State processes have the option of also sending comments through the applicant to the Federal government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by the Department.

Section 3015.309 Accommodation of Intergovernmental Concerns.

Paragraph (a) of this section now provides that if a State process provides a State process recommendation to the Department through a single point of contact, the Department becomes obligated to accommodate or explain. This means that the Department need not accommodate or explain comments that (1) do not constitute or form the State process recommendation, or (2) are not provided through a single point of contact. The Department will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a State process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the State process. In response to a substantial number of comments, paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that the Department may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, the Department will always send a written explanation of the nonaccommodation.

As under the proposed rule, the Department will not implement a

decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, the Department believes that to avoid unduly delaying the award of Federal financial assistance or the start of direct Federal development, a longer period should not be provided. The Department believes that ten days will be adequate time for the State process to formulate an appropriate political response if the issue is sufficiently important within the State.

The Department has included a new paragraph (c) in the regulations to clarify when the ten day waiting period begins to run. If the Department has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten day period begins to run from the date of that communication, even though the written explanation arrives later. If the Department sends a letter but does not make a telephone call, the ten day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the long-standing successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, the Department will be free to begin carrying out its decision on the 16th day after the day the Department sent the letter.

Some commenters indicated what they sought most was Federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, the Department will make an effort to be as responsive as practicable, consistent with the Department's responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

Section 3015.310 Interstate Situations.

This section is based on § 3015.308 of the NPRM. One feature of the NPRM section—the provision of 45 days for comments in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases, except noncompeting continuation awards.

The Department received several comments on its handling of interstate

situations. Most of these comments asked for greater Federal guidance or involvement in interstate situations, especially when various affected States did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them.

The Department does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the Department's interest to have affected States mutually agree on the Department's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, the Department will work with officials of States involved in an interstate situation in an attempt to secure agreement. However, this should not be a regulatory requirement.

The Department believes that designated areawide agencies in interstate metropolitan areas do have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which the Department will make efforts to notify in interstate situations. OMB will periodically provide the Department with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the Department if it is sent through a State single point of contact and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a State process.

For example, the Metropolitan Washington, D.C. Area Council of Governments (COG), represents jurisdictions in an interstate area including parts of Maryland, Virginia, and the District of Columbia. If that Council of Governments was delegated a specific review role and makes a recommendation on a proposed action by the Department, and that recommendation is transmitted to the Department through the single point of contact of either Maryland, Virginia, or the District of Columbia, the Department is obligated to accommodate or explain. However, if a State process recommendation differing from the Washington COG recommendation is also transmitted by another State's single point of contact, the Department would also accommodate or explain that recommendation as well.

Section 3015.311 Simplification, Consolidation, or Substitution of State Plans.

This section is unchanged from the NPRM. The Department did receive a number of comments on this section, however. Several agreed that States should be able to simplify State plans, but objected to allowing States to consolidate their plans. The reasons for these objections differed; most appeared to be from those who feared that consolidation of State plans would cause the interests of particular groups or particular programs to be ignored. As this section merely implements the requirement of the Order that Federal agencies allow the consolidation of State plans, the Department had little discretion in developing this provision. In addition, the Department has the obligation to ensure that any simplified or consolidated State plan continues to meet all Federal requirements. For example, a consolidated plan that failed to meet statutory or regulatory requirements for a particular program would not be accepted.

One commenter recommended that an appeals process be established to deal with situations in which Federal agencies disapprove modified State plans. The Department believes that such a process is not necessary, because if a Federal agency disapproves a modified plan for failure to meet Federal requirements, the State can appeal the decision through normal agency procedures. In any event, during the review process before disapproval, the Department will work with States to resolve problems that could impede approval.

A few commenters recommended that there be a Federal "single point of contact" for State plans or other purposes. The Department believes this idea would not work because of differing agency responsibilities under the wide variety of program statutes that various Federal agencies carry out. In addition, Federal agencies need to retain existing delegations of State plan approval authority. However, the Department and other Federal agencies will each designate a focal point with whom States can deal on State plan matters. In addition, the Federal agencies having State plans intend to establish an informal interagency steering group, which will meet quarterly to discuss State plan matters. Through this steering group, as well as by interagency contacts in specific situations, Federal agencies will coordinate with each other in cases when States consolidate plans across Federal lines. This coordination should

promote consistent determinations among and within agencies on State plans.

Finally, one commenter suggested that the Federal agencies develop a model State plan format that could be used by the States. While we are willing to provide suggestions in response to specific State questions (including providing formats that have been used successfully by other States), we believe that States should be free to develop their own formats to reflect their own situations. Consequently, the Department will not develop model formats, since formats developed as models for the voluntary use of States could come to be regarded, either by Federal agencies or by States, as required.

A list of State plans that may be simplified, consolidated, or substituted for, appears elsewhere in today's *Federal Register* and will be updated periodically.

Section 3015.312 Waivers.

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing Federal noncompliance with the Executive Order. The Department is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances in which an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulations. If the Department uses the emergency waiver provision, the Department will attempt, to the extent feasible and meaningful, to involve the State process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, the Department will keep records of all situations in which the emergency waiver was used.

Other Comments

In addition to comments specifically pertaining to various features of this regulation, there are several other comments to which the Department would like to respond. Several commenters said that OMB should have a stronger oversight role, thus ensuring that Federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that Federal agencies are not really interested in consulting with State and local governments and a view that, in the absence of an OMB "policing" role, agencies would tend to ignore these obligations.

The Department wants to state unequivocally that it is fully committed to implementing all of the provisions of the Order and these regulations, and that it will act quickly to respond to complaints from State, area-wide, regional, and local officials and entities that mistakes or omissions have been made with respect to the Department's obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federal policy, and the Administration's policymaking officials intend the policy to be carried out fully by every one in their agencies.

OMB will have a general oversight role with respect to Federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other Federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to Federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of this Department are responsible to the Secretary, who in turn is responsible to the President for carrying out important Administration policy.

Finally, a number of commenters reminded the Department and other agencies that we should continue to follow existing statutory requirements that affect many Federal agencies with respect to environmental impact statements, historic preservation, civil rights, etc. The Department will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, the Department will work with States to integrate handling of some of these crosscutting requirements with the official State process. However, regardless of the structure of a State's process or whether there is a State process at all, the Department will continue to meet all legal requirements in these areas.

In a related question, some commenters asked how certain requirements concerning environmental impact statements, coastal zone management, and health systems agencies would be handled administratively under these regulations. Under the A-95 system, clearinghouses often coordinated

responses to Federal agencies relating to these matters. Under the Executive Order system, a State could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. Federal agencies also could continue any arrangements or relationships with entities in the State that now exist to facilitate this review and comment. Where it is feasible, we encourage a coordinated response under these regulations and other coordination requirements.

Scope

The Department received numerous letters regarding the proposed inclusion of Cooperative Extension Service (CES) programs within the scope of the Order. However, since much of the public comment reflected a misinformed view of the purpose of the President's Executive Order and the implementing policies, a separate notice discussing the proposed inclusion/exclusion of CES is being published for public comment simultaneously with this final rule. At this time, CES is not being included in the scope of the Order pending further consideration based upon the reopened comment period for this purpose.

The Department received five letters regarding the exclusion of Soil and Water Loans and Recreation Facility Loans programs. Specifically, commenters believed that States should have the privilege of reviewing any proposals or plans to develop or manage any facilities which would have an impact on the social, physical, or economic environment of an adjoining area through creating additional demands for schools, housing, recreation areas, tourist facilities, utility usage, public services, transportation needs, or which would require any local government or branch of State government to provide funds or services for matching or continuation. One commenter recommended that any program or activity relating to, or affecting a function of a general purpose local government or a State agency should be included.

The Department concurs that the aforementioned programs are of such a nature as to create a direct impact on the environment, planning, zoning, licensing, and the general infrastructure of a State, and, therefore, these programs have been included within the scope of the Order.

The Department received four letters regarding the exclusion of the Low to Moderate Income Housing Loans program and two letters regarding the exclusion of the Rural Abandoned Mine

program. Also, one commenter wanted to routinely review Soil Survey (Land Grant University only), Conservation Operations—Technical Assistance and Conservation Operations—Inventory and Monitoring programs which had been proposed for exclusion. These programs consist primarily of data collection and dissemination to the general public, based on National needs and technical criteria. Further, there is no research, development, or demonstration activities with either a unique geographical focus or direct relevance to the governmental responsibilities of a State or local government. Therefore, the Department has determined that these programs do not meet the established criteria for inclusion under the Executive Order.

Five letters were received regarding the proposed exclusion of Rural Electrification Loans and Loan Guarantees and Rural Telephone Loans and Loan Guarantees.

The E.O. states that " * * * State or local governments * * * that would be directly affected by proposed Federal financial assistance * * * " should be included within the scope of the Order. State and local governments will be affected by these programs by the physical impact that these utility sites will have on local areas. Financial concerns such as an increase in the local tax base must also be considered. It is also the intent of the Order to include programs in which Federal funding is directed to any State or local government. In both these programs, eligible applicants include municipalities or other "public bodies". Therefore, those loans and loan guarantees which are directed to municipalities or other public bodies are included within the scope of the Order.

The Department received two letters requesting the inclusion of several Agricultural Stabilization and Conservation Service (ASCS) programs. One commenter requested inclusion of three on the basis that the programs would have an impact on forestry concerns. The other commenter requested the inclusion of 13 of the agency's programs stating that the Department has been excessive in its interpretation of what could or should be excluded from coverage under the Executive Order. The Department, however, stands behind its original decision to exclude these programs because they involve direct financial assistance between the Federal government and individuals.

The Department received three letters regarding the exclusion of Animal and Health Inspection Service programs from coverage under the Executive

Order. Specifically, one commenter stated that they were quite satisfied with the current review process and additional reviews would be superfluous. The same commenter also felt that USDA agency personnel kept them well informed about the programs and any changes that occurred. One letter addressed a particular pest control problem and stated that additional State review procedures would only tend to delay the steps necessary to control the pests during their most critical stages of development. Most States that would choose to review this program would have performed all reviews and studies well before the critical time of implementation was at hand. Since major pest control programs, such as spraying for Gypsy-Moths or the California Medfly, would have a significant impact on State or local areas, the Department believes that States should be provided with an opportunity to review and comment on them, if they so desire. However, in emergency situations, the Secretary may waive the provisions of these regulations.

The Department received nine letters regarding the inclusion of Forest Service (FS) programs. Two commenters requested inclusion of National Forest System Activities and FS land exchange proposals. One commenter felt that any program or activity relating to or affecting a general purpose local government or a State agency be included and that the final decision for inclusion or exclusion should be left to State and local governments cooperatively. Two other commenters requested inclusion of specific National Forest System Activities such as FS Schools and Roads—Grants to States and FS Schools and Roads—Grants to Counties, while one commenter requested inclusion of FS School Funds—Grants to Arizona and FS Additional Lands—Grants to Minnesota. Two commenters recommended inclusion of FS projects of small scale or size that are highly localized. Concern was expressed that FS is undertaking very sensitive direct development on relatively small parcels of land and that exclusion of such from coverage under the Order should only be subject to agreement with affected State and local agencies. Three commenters requested inclusion of the FS Young Adult Conservation Corps program. The reason stated by two commenters was that they wanted to review any proposals or plans to develop or manage any facilities which would impact the social, physical, or economic environment of an adjoining area or

which would require any local government or branch of State government to provide funds or services for matching or continuation. One commenter requested inclusion of FS research grants and cooperative agreements and all FS research activities. Finally, the Department received one letter requesting exclusion of National Forest land management processes and activities and the Cooperative Forestry Assistance program, since existing policies and regulations concerning consultation and review for those programs and activities are consistent with the policies and objectives of the Order.

In general, as stated earlier in this preamble, the Department believes that, while the purpose of the Order is to give State and local governments increased access to and influence on Federal decisionmaking, certain Federal programs and activities, by their nature, should be excluded from its requirements. The Department has excluded those National Forest System Activities for which funds are distributed by statutory formulas, and for which the Department has no authority to approve specific sites or projects where the funds will be used. Additionally, those National Forest System Activities involving land management practices, negotiations of involved and sensitive land exchanges, programs with characteristics inappropriate for coverage, and projects of a small scale or size which are highly localized, are excluded unless they involve direct development activities. However, the Department will continue to consult with appropriate State and local officials in accordance with Section 401 of the Intergovernmental Cooperation Act.

FS land management practices not involving direct development are excluded since such practices involve the daily administration and protection of resources on National Forest System lands. An additional State review under the Order would have little or no bearing on Federal decisions in this area. Negotiations involving land exchange proposals are excluded since a review under the Executive Order could result in the premature release of appraisal figures for the value of the lands, thereby causing possible local speculation and higher costs to the government.

Those small scale projects not involving direct development are excluded, as the Department believes that such small scale projects would have little if any impact on State or local governments.

Regarding coverage of the FS Young Adult Conservation Corps, the comments made on this do have merit. However, the program authority expired on September 30, 1982. Consequently, there is no funding or activity for this program, and the issue of coverage under the Order is irrelevant.

The Department has excluded the FS research grants and cooperative agreements and all FS research activities. As stated earlier, such basic research is National in scope and has no impact on State or local governments.

Regarding the exclusion request for FS National Forest land management practices and Cooperative Forestry Assistance, the Department has determined that these programs and activities have formal and informal consultation process already in place which provide State and local government officials meaningful opportunities to contribute to program planning and decisionmaking. All of these processes are fully in accord with the spirit and intent of the Executive Order. It is in this spirit that the Department is continuing existing processes for consultation, rather than imposing additional or duplicative regulatory requirements and disrupting existing avenues of communication, procedures and time frames for these programs. Therefore, while these programs have not been excluded, if a State chooses to select these programs with existing consultation processes, it must agree to adopt the existing process.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the Department and allow State and local governments to establish cost effective consultation procedures. For this reason, the Department believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant, in any case. Consequently, the Department certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of information.

List of Subjects in 7 CFR Part 3015

Grant programs (Agriculture), Intergovernmental relations.

PART 3015—[AMENDED]

1. The authority citation for Part 3015 reads as follows:

Authority: 5 U.S.C. 301.

§ 3015.203 [Reserved]

2. In Subpart U—Miscellaneous, § 3015.203 is removed and subsequently reserved.

3. For the reasons set out in the preamble, the Department of Agriculture amends Title 7, Code of Federal Regulations, Part 3015, by adding a new Subpart V, to read as follows:

Subpart V—Intergovernmental Review of Department of Agriculture Programs and Activities.

Sec.

- 3015.300 Purpose.
- 3015.301 Definitions.
- 3015.302 Applicability.
- 3015.303 Secretary's general responsibilities.
- 3015.304 Federal interagency coordination.
- 3015.305 State selection of programs and activities.
- 3015.306 Communication with state and local elected officials.
- 3015.307 State comments on proposed Federal financial assistance and direct Federal development.
- 3015.308 Processing comments.
- 3015.309 Accommodation of intergovernmental concerns.
- 3015.310 Interstate situations.
- 3015.311 Simplification, consolidation, or substitution of state plans.
- 3015.312 Waivers.

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); Sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334).

§ 3015.300 Purpose.

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs", issued July 14, 1982, and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on State processes and on State, arewide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) The regulations are intended to aid the internal management of the

Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 3015.301 Definitions.

"Department" means the U.S. Department of Agriculture.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

"Secretary" means the Secretary of the U.S. Department of Agriculture or an official or employee of the Department acting for the Secretary under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Island, or the Trust Territory of the Pacific Islands.

§ 3015.302 Applicability.

The Secretary publishes in the Federal Register a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 3015.303 Secretary's general responsibilities.

(a) The Secretary provides opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, the Department.

(b) If a State adopts a process under the Order to review and coordinate proposed Federal financial assistance and direct Federal development, the Secretary, to the extent permitted by law:

(1) Uses the State process to determine official views of State and local elected officials;

(2) Communicates with State and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the State process;

(4) Allows the States to simplify and consolidate existing Federally required State plan submissions;

(5) Where State planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of State plans for Federally required State plans;

(6) Seeks the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

§ 3015.304 Federal interagency coordination.

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

§ 3015.305 State selection of programs and activities.

(a) A State may select any program or activity published in the Federal Register in accordance with § 3015.302 of this subpart for intergovernmental review under these regulations. Each State, before selecting programs and activities, shall consult with local elected officials.

(b) Each State that adopts a process shall notify the secretary of the Department's programs and activities selected for that process.

(c) A State may notify the Secretary of changes in its selections at any time. For each change, the State shall submit to the Secretary an assurance that the State has consulted with elected local officials regarding the change. The Department may establish deadlines by which States are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a State's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

§ 3015.306 Communication with State and local elected officials.

(a) The Secretary provides notice to directly affected State, areawide, regional, and local entities in a State of proposed Federal financial assistance or direct Federal development if:

(1) The State has not adopted a process under the Order; or

(2) The assistance or development involves a program or an activity that is not covered under the State process.

(b) This notice may be made by publication in the Federal Register or other appropriate means, which the Department in its discretion deems appropriate.

(c) In order to facilitate communication with State and local officials the Secretary has established an office within the Department to receive all communications pertinent to this Order. All communications should be sent to the Office of Finance and Management, Room 143-W, Administration Building, Washington, D.C. 20250, Attention: E.O. 12372.

§ 3015.307 State comments on proposed Federal financial assistance and direct Federal development.

(a) Except in unusual circumstances, the Secretary gives State processes or directly affected State, areawide, regional, and local officials and entities:

(1) At least 30 days from the date established by the Secretary to comment on proposed Federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Secretary to comment on proposed direct Federal development or Federal financial assistance other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination and communication with the Department have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Development Act shall allow areawide agencies a 60-day opportunity for review and comment.

§ 3015.308 Processing comments.

(a) The Secretary follows the procedures in § 3015.309 if:

(1) A State office or official is designated to act as a single point of contact between a State process and all Federal agencies; and

(2) That office or official transmits a State process recommendation for a program selected under § 3015.305.

(b) (1) The single point of contact is not obligated to transmit comments from State, areawide, regional or local officials and entities where there is no State process recommendation.

(2) If a State process recommendation is transmitted by a single point of contact, all comments from State, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a State has not established a process, or is unable to submit a State process recommendation, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected by a State process, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a State process recommendation for a non-selected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 3015.309 of this subpart.

(e) The Secretary considers comments which do not constitute a State process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 3015.309 of this subpart, when such comments are provided by a single point of contact by the applicant, or directly to the Department by a commenting party.

§ 3015.309 Accommodation of intergovernmental concerns.

(a) If a State process provides a State process recommendation to the Department through its single point of contact, the Secretary either—

- (1) Accepts the recommendations;
- (2) Reaches a mutually agreeable solution with the State process; or
- (3) Provides the single point of contact with a written explanation of the decision, as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by also providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

- (1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or
- (2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting

period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification five days after the date of mailing of such notification.

§ 3015.310 Interstate situations.

(a) The Secretary is responsible for:

- (1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials in States which have adopted a process and which selected the Department's program or activity;

(3) Making efforts to identify and notify the affected State, areawide, regional, and local officials and entities in those States that have not adopted a process under the Order or do not select the Department's program or activity; and

(4) Responding, pursuant to § 3015.309 of this subpart, if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 3015.309 if a State process provides a State process recommendation to the Department through a single point of contact.

§ 3015.311 Simplification, consolidation, or substitution of State plans.

(a) As used in this section:

(1) "Simplify" means that a State may develop its own format, choose its own submission date, and select the planning period for a State plan.

(2) "Consolidate" means that a State may meet statutory and regulatory requirements by combining two or more plans into one document and that the State can select the format, submission date, the planning period for the consolidated plan.

(3) "Substitute" means that a State may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a State may decide to try to simplify, consolidate, or substitute Federally required State plans without prior approval by the Secretary.

(c) The Secretary reviews each State plan a State has simplified, consolidated or substituted and accepts the plan only if its contents meet Federal requirements.

§ 3015.312 Waivers.

In an emergency, the Secretary may waive any provision of these regulations.

Issued at Washington, D.C.

John J. Franke, Jr.,
Assistant Secretary for Administration.

Approved: June 14, 1983.

John R. Block,
Secretary of Agriculture.

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BILLING CODE 3410-K5-M

7 CFR Part 3015

Department of Agriculture Programs and Activities Covered Under Executive Order 12372

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule related notice.

SUMMARY: The purpose of this Notice is to inform State and local governments and other interested persons of programs and activities included within the scope of Executive Order 12372, "Intergovernmental Review of Federal Programs." A full understanding of the requirements of the Order may be gained by referring to the final rules published in 7 CFR Part 3015, Subpart V, appearing in this Part III in today's Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Zimmerman, Supervisory Program Analyst, Office of Finance and Management, USDA, Room 143-W, Administration Building, Washington, D.C. 20250 (telephone (202) 382-1553).

SUPPLEMENTARY INFORMATION: The listing of programs and activities that are subject to Executive Order 12372 is listed by the Catalog of Federal Domestic Assistance Number as follows:

Animal Plant and Health Inspection Services

CFDA No.

10.025 All Domestic Programs and Activities.

Agricultural Marketing Service

10.156 Federal/State Marketing Service

Farmers Home Administration

- 10.405 Farm Labor Housing Grants *
- 10.409 Irrigation and Drainage Loans *
- 10.411 Site Development Loans *
- 10.411 Self-Help Site Development Loans *
- 10.413 Recreation Facility Loans *